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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re TRENTON V., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

TRENTON V.,

Defendant and Appellant.

A133637

(Solano County
Super. Ct. No. J38377)

The Solano County District Attorney filed a petition under Welfare and Institutions Code section 602 alleging appellant Trenton V. made a criminal threat and committed battery, and further alleged the criminal threat amounted to a serious felony. (Pen. Code,¹ § 1192.7, subd. (c).) After a contested jurisdiction hearing, the juvenile court dismissed the battery allegations, but sustained allegations of a criminal threat and deemed that count a felony. (§ 422, subd. (a).) Following the disposition hearing, the juvenile court adjudged appellant a ward of the court. He was placed on probation for a maximum of three years, under the custody of his parents with the option of living independently (he was 18 at the time), according to the discretion of the probation officer. On appeal, the issue is whether there was sufficient evidence to sustain the allegations of a criminal threat. We affirm the order.

¹ All further statutory references are to the Penal Code.

I. FACTS

On April 5, 2011, appellant and his girlfriend Courtney B. argued outside the home of Courtney's friend Dallas D. They were breaking up. From her parked car, Dallas witnessed the couple fighting. She heard yelling and saw them holding and shaking each other's shoulders. Courtney was visibly upset and crying, and appellant was trying to calm her down. Dallas remained in her car where she could see the couple, until her mother came home. Shortly thereafter, Dallas's mother came outside and told Courtney and appellant to go home. Courtney went into the house with Dallas.

After they parted ways appellant repeatedly called both of the girls. Dallas answered the phone and fought with him, yelling at him to leave her and Courtney alone. He wanted Dallas to give Courtney the phone, but she refused. Appellant asked Dallas to meet him outside to talk. He did not threaten her during that conversation. However, appellant then sent a text message to Courtney stating that he had a gun and knew where Dallas's bedroom window was. Courtney showed the text message to Dallas.

Dallas's parents called the police. Shortly thereafter, Police Officer Ramirez arrived at the house to question the girls. Dallas explained she had never seen appellant with a gun, but based on her conversations with Courtney, she was afraid that he possessed one. She told the officer he was known to carry firearms. Dallas also told Officer Ramirez she saw appellant abuse Courtney in the past, although Courtney denied the abuse.

After the incident a defense investigator interviewed Dallas while she was out to dinner. Dallas told the investigator that she was upset because she still received multiple phone calls from appellant, and wanted him to stop. Dallas stated that she was not afraid of appellant, but was annoyed by the phone calls. The investigator did not specifically ask whether Dallas was afraid of him on the day of the incident. The juvenile court took this statement into consideration, but found it ambiguous because there was no indication whether the statement referred only to the calls or also to the threat.

In court Dallas clarified her statement to the investigator. She testified she was afraid appellant would "do something" that day, which is why she called the police.

Appellant's telephone calls did not frighten her, but what he said did. She described him as "psycho" based on the numerous telephone calls she received and her knowledge of how controlling appellant was of Courtney. Dallas was not sure whether appellant would actually enter her room, but was frightened by the threat nonetheless. Dallas was concerned for months prior to the incident because she thought appellant had been physically abusing Courtney.

Although Courtney did not testify regarding the text message, and the text itself was never entered into evidence, the juvenile court ultimately found that "[t]he threat was clear, immediate, unconditional, and specific enough for her to have a fear, and she had a sustained fear." Dallas's sustained fear was made evident by her willingness to testify in court and her testimony that she was afraid that day. The juvenile court viewed the text message in the context of the surrounding circumstances, and found it constituted a criminal threat.

II. DISCUSSION

A. Standard of Review

Appellant contends there was insufficient evidence to sustain the allegation of a criminal threat. "To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Kipp* (2001) 26 Cal.4th 1110, 1128.) In the event the findings are reasonably justified, whether a contrary finding is also possible does not warrant a reversal of the judgment. (*People v. Valencia* (2008) 43 Cal.4th 268, 289-290.) This standard applies to juvenile criminal cases. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.)

B. *Sufficiency of the Evidence*

Appellant claims the People failed to establish sufficient evidence for any of the five required elements to sustain allegations of a criminal threat under section 422.² *People v. Toledo* (2001) 26 Cal.4th 221, 227-228, sets forth five elements the prosecution must prove to establish a violation of section 422: “(1) that the defendant ‘willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,’ (2) that the defendant made the threat ‘with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,’ (3) that the threat—which may be ‘made verbally, in writing, or by means of an electronic communication device’—was ‘on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,’ (4) that the threat actually caused the person threatened ‘to be in sustained fear for his or her own safety or for his or her immediate family’s safety,’ and (5) that the threatened person’s fear was ‘reasonabl[e]’ under the circumstances. [Citation.]” Appellant argues substantial evidence was not presented for these five elements because the threat was vague and ambiguous, the text message was never intended for Dallas, and the surrounding circumstances did not support threatening behavior.

1. *Threat Was Not Vague or Ambiguous*

Appellant maintains that no rational trier of fact would find Dallas’s fear reasonable because it was not based on threatening behavior but solely on a “vague” text message sent to Courtney. The only evidence presented to the juvenile court was

² Section 422, subdivision (a) states in relevant part: “Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety”

Dallas's testimony regarding the contents of the text message. Appellant argues that even if the text said he had a gun, it did not explicitly say he would use it or how. According to appellant, the text was too ambiguous for Dallas to reasonably believe appellant would cause her great bodily harm or death, to be intended as a threat, or to convey a gravity of purpose and immediacy.

As this court has held, "[a] threat is sufficiently specific where it threatens death or great bodily injury." (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.) Section 422 does not require details such as the time or precise manner of execution to be expressed. In addition, "there is no requirement that a specific crime or Penal Code violation be threatened." (*Id.* at p. 755.) "[T]he meaning of the threat by defendant must be gleaned from the words and all of the surrounding circumstances." (*People v. Martinez* (1997) 53 Cal.App.4th 1212, 1218.) "Even an ambiguous statement may be a basis for a violation section 422." (*People v. Butler, supra*, 85 Cal.App.4th at p. 753, italics added.)

The text message stated that appellant had a gun and knew where Dallas's bedroom window was. It did not state that appellant intended to use it to cause Dallas harm. On the other hand and as the People point out, a gun is a deadly weapon capable of causing bodily injury or death. Dallas and the juvenile court reasonably inferred that appellant intended to use the gun to harm Dallas within her home. A statement need not plot out the time, manner, or specific crime to be committed to be considered a criminal threat under section 422. (*People v. Butler, supra*, 85 Cal.App.4th at p. 755.)

Dallas saw the text message as she was fighting with and yelling at appellant over the phone. The context in which it was received was hostile, not lighthearted, leading Dallas to consider it a threat rather than a joke. The juvenile court similarly concluded appellant intended it to be a threat based on the circumstances. Dallas was aware he was already outside her house because he asked her to meet him outside. Appellant had been to Dallas's house before, and knew where her bedroom was. Courtney had told her appellant possessed a gun, even though Dallas never saw it. These surrounding circumstances supplement the ambiguity of the threat, suggesting a gravity of purpose and immediacy. In this context, Dallas reasonably feared appellant.

2. Threat Was Conveyed Through a Third Party

Appellant asserts that the text message was not meant or intended for Dallas because it was sent to Courtney; neither did the message instruct Courtney to show it to Dallas.

A victim need not receive a threat directly, but rather a third party witness may relay it to the victim. “Section 422 does not in terms apply only to threats made by the threatener personally to the victim nor is such a limitation reasonably inferable from its language. The kind of threat contemplated by section 422 may as readily be conveyed by the threatener through a third party as personally to the intended victim.” (*In re David L.* (1991) 234 Cal.App.3d 1655, 1659.) However, the threat must still be intended for the victim, even if conveyed through another. (*People v. Felix* (2001) 92 Cal.App.4th 905, 908.)

In re David L. held that a statement made to a third party still constituted a criminal threat under section 422. In that case the minor and the victim physically fought in the presence of a third party, the victim’s friend. That night the minor called the third party and divulged his plan to shoot the victim. The court inferred from the “climate of hostility” and the manner in which the threat was made that the minor intended to threaten the victim personally. (*In re David L., supra*, 234 Cal.App.3d at p. 1659.) The defendant knew his threat would be passed on because the victim and the third party were friends. In contrast, in *People v. Felix, supra*, 92 Cal.App.4th at page 913, because there was no evidence that the defendant knew his statements made during a therapy session would be revealed to the victim, the court held they did not constitute criminal threats. The case at hand is more analogous to *In re David L.* based on the friendship between Dallas and the third party (Courtney) and the circumstances. Appellant was also aware that the two girls were together at Dallas’s house because he was on the phone arguing with Dallas and asking that she give the phone to Courtney, and he saw them both enter the house together earlier. Appellant’s knowledge of the girls’ friendship and that they were together at the time could lead a reasonable trier of fact to infer that he intended Dallas to see the text as he expected Courtney to show it to her.

3. *Surrounding Circumstances*

Appellant also contends that the surrounding circumstances do not indicate a specific intent to threaten Dallas, nor do they establish a gravity of purpose or immediacy. In addition, even though Dallas testified she was afraid, the People presented insufficient evidence to establish a sustained and reasonable fear in light of the surrounding circumstances.

To determine whether statements constitute a criminal threat under section 422, the court takes into account all of the surrounding circumstances. The “type of situation can be very intimidating and can carry an aura of serious danger.” Displays of anger or aggressive behavior, along with subsequent actions, are pertinent factors. (*People v. Martinez, supra*, 53 Cal.App.4th at p. 1221.) “The parties’ history can also be considered as one of the relevant circumstances.” (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340.) “The victim’s knowledge of defendant’s prior conduct is relevant in establishing that the victim was in a state of sustained fear.” (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) “The statute . . . does not concentrate on the precise words of the threat. Instead, the statute focuses on the effect of the threat on the victim, to wit, communication of a gravity of purpose and immediate prospect of execution of the threat.” (*People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1158.)

Appellant argues that he did not take steps to carry out his threat as the defendant did in *People v. Martinez, supra*, 53 Cal.App.4th at page 1221, where the court held that the defendant’s subsequent actions indicated his specific intent to threaten his victims and the grave nature of those threats. However, the intent to carry out a threat is not a requirement under section 422, but merely a factor the court may consider. (*People v. Martinez, supra*, 53 Cal.App.4th at p. 1220.)

On the day of the incident, Dallas witnessed Courtney and appellant yell at and shake each other; appellant repeatedly called both of them; and Dallas argued with him over the phone. Appellant asked her to meet him outside, indicating his proximity and the possibility of immediate action. As Dallas testified in court, she knew appellant abused Courtney in the past and was very controlling in their relationship. Although she

did not personally have any prior physical altercations with appellant, she knew of the prior conduct of the person making the threat. The argument Dallas witnessed and partook in created a hostile atmosphere at the time the text was sent, and signified appellant's specific intent to threaten and a gravity of purpose. Dallas showed the text message to her parents who immediately called the police, not only indicating that Dallas experienced a sustained fear, reasonable under such circumstances.

III. DISPOSITION

The order is affirmed.

Reardon, Acting P.J.

We concur:

Rivera, J.

Sepulveda, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.